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In the Supreme Court of the United States

No. 276 October Term, 1970

PETER PARIS,
Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA,
Respondent

REPLICATION TO ANSWER OF COMMONWEALTH OF PENNSYLVANIA

PETER PARIS,
Petitioner.

903B Grant Building,
Pittsburgh Pa. 15219.

Merrelle Printing Co., Law Printers, Box 188, Sayre, Pa. 18840

TABLE OF CONTENTS

	Page
Argument	1
Conclusion	3
Appendix:	
Excerpts From Transcript	4
Order	9

REPLICATION TO ANSWER OF COMMONWEALTH OF PENNSYLVANIA

A. On page 7 of its Answer the Commonwealth declares:

"If it had been the case that Petitioner was not involved in the act alleged and if Petitioner wished to testify to the effect that the prosecutrix had incorrectly identified petitioner rather than Serafin as the actual assailant, a conflict of interest could have arisen by virtue of the dual representation."

Examination of the Serafin trial transcript filed in the Court of Quarter Sessions of Washington County, Pennsylvania at No. 227 September Sessions, 1967 discloses that John F. Bell, Esquire, made an identification motion at pp. 61-62 of the record as follows (see Appendix hereto):

"Your Honor, if that's the case, I would like to have any identification of the Defendant Serafin suppressed also with an independent hearing for the reason that the police lineup, there's evidence that she could not identify Serafin until the third time she was brought into the room. Also, there was evidence there may have been suggestions as to who he was and if it deprived him of his constitutional rights, and also, I feel at this time that at the police lineup, it has gone beyond the interrogation stage and was in the accusatory stage and, therefore, he was without counsel."

In fact, habeas corpus was granted on petition of Robert Ray Ragazzini in the United States District Court for the Western District of Pennsylvania by Senior Judge Wallace S. Gourley on this very issue with an order that Ragazzini must be retried in 60 days or be released. See Civil Action No. 70-548 in the United States District Court for the Western District of Pennsylvania, United States of America ex rel. Robert Ray Ragazzini v. Joseph Brierley, Superintendent, State Correctional Institution, Pittsburgh, Pennsylvania.

It is apparent that the same counsel represented two defendants, one of whom took the stand and admitted the other was present whereas the other did not take the stand and denied he was present.

Certainly this is a sufficient conflict to vitiate representation.

B. On page 6 of his Answer, the prosecutor declares "only Kusturiss represented petitioner at his separate trial."

However, the Docket Entries at 1a indicate that on October 9, 1967, both Kusturiss and John F. Bell were present when the jury was sworn.

C. On page 7 of his Answer, the prosecutor declares Paris ". . . in no way implicated Serafin." However 247a of the record discloses the contrary:

"Q. Now, isn't it true that the only real buddies you had there that evening were Ragazzini and Serafin?

A. Well, they were my buddies, yes.

• • • • • • • •

Q. Who else went with you? Ragazzini and Martin and who else?

A. Serafin, Ragazzini." (240a)

CONCLUSION

It is respectfully submitted that by the very admission of the Prosecutor that this Honorable Court should grant certiorari and reverse.

Respectfully submitted,
PETER PARIS,
Petitioner, Pro. Persona.

APPENDIX

EXCERPTS FROM TRANSCRIPT

. . . . . .

(61) make an independent hearing on the identification of the defendant Ragazzini at the police lineup. Trooper Stouffer previously admitted that she could not identify the defendant Ragazzini and that there were no other lineups held, and that therefore under the recent cases, it would be incumbent upon your Honor to determine exactly the manner this witness made her identification of the defendant Ragazzini before she testified to the jury.

MR. TOWNSEND: Your Honor, I think Mr. Bloom's motion is premature in that the witness is going to identify Serafin, not Ragazzini.

MR. BELL: Your Honor, if that's the case, I would like to have any identification of the defendant Serafin suppressed also with an independent hearing for the reason that the police lineup, there's evidence that she could not identify Serafin until the third time she was brought into the room. Also, there was evidence there may have been suggestions as to who (62) he was and if it deprived him of his constitutional rights, and also, I feel at this time that at the police lineup, it has gone beyond the interrogation stage and was in the accusatory stage and, therefore, he was without counsel.

MR. TOWNSEND: The Commonwealth is not going to introduce any evidence of the police lineup.

BY THE COURT: In other words, you're telling me that you're not going to rely on the lineup identification.

MR. TOWNSEND: That is correct.

MR. BELL: It is only because of the police lineup and the identification there that she can identify the defendant Serafin today in in-court identification.

BY THE COURT: It seems to me that we have got two things a little mixed up. Identification of who was present and identification of who had intercourse with her, and we may have some trouble in keeping those straightened out as we go along. Does anybody seriously (63) contend that this man was not present, as opposed to did not have intercourse with her?

MR. BELL: I think we are putting the car before the horse.

BY THE COURT: Well, now, I've asked if anybody seriously contends that this man was not present.

MR. BLOOM: The defendant Ragazzini seriously contends that the Commonwealth cannot prove beyond a reasonable doubt that the defendant Ragazzini was even there.

BY THE COURT: That is a sort-of double negative, Mr. Bloom. Do you say that it's Ragazzini's position that he wasn't even there?

MR. BLOOM: If the Court please, it is not incumbent on the defendant to take any position at all at this time, except to force the Commonwealth to its burden of proof and the fact that the Commonwealth intends to

hide the police lineup certainly should be enough to seriously alert your Honor that there is something wrong with what took place there.

(64) BY THE COURT: This lineup is like getting a statement. You can't use a statement that isn't Miranda-antiseptic. You can't use a lineup that doesn't conform to the latest ruling, but the fact that an improper statement was taken or an improper lineup held, does not of itself immunize a defendant from prosecution. It protects you from the use of proof of or gained by such improper statement or improper lineup.

MR. BLOOM: That is exactly the point of the defendant Ragazzini, your Honor. At the police lineup, he was present for a lineup. The victim could not identify him as either being there or as anyone who assaulted her. Suddenly, she comes into court and through the District Attorney's opening statement, will identify the defendant Ragazzini as both being there and as having intercourse (65) with her. This would certainly alert the Court that there is something wrong.

BY THE COURT: All right, now. As far as Ragazzini is concerned, this is premature. Now, for Serafin,—are you prepared to have her identify Serafin as present without recourse to the lineup?

MR. TOWNSEND: Yes, we are.

BY THE COURT: All right, now, I'm going ahead on that basis, but if it turns out that she cannot or won't, you understand you're going to be in trouble, Mr. Townsend. Now, I'm going to rely on your statement at the moment.

MR. BLOOM: Does the Court mean that there is an independent identification here other than her seeing the defendants at the lineup?

BY THE COURT: I'm going to let him put it in the way he wants to, and we'll play it by that, but if he falls back on a lineup identification, then we have to take the jury out and hear about the lineup out of the hearing of the jury.

(66) MR. BLOOM: Would that mean, your Honor, then, that there was some time before the lineup that she was able to identify—

BY THE COURT: Now, just a minute. You don't want to take any position on some things and wrap the constitutional mantle around you, but then you want to cross-examine me on the prosecution's case.

MR. BELL: Is the identification of the defendant Serafin going to be based entirely on an in-court identification here today?

BY THE COURT: I think he's entitled to develop it his own way.

MR. TOWNSEND: I'm going to ask her if Marion Serafin was one of the boys who got out of the car and she is going to reply, "Yes." She will state she did not know his name at that time. Her identification was that night; his name comes later.

BY THE COURT: I think that's all right. You can identify a (67) person without knowing his name. Let's go ahead.

(End, side bar conference.)

BY THE COURT: Mr. Brovey, take the jurors back to No. 2. Pause for a minute until we move them.

(Side bar conference resumes as panel of jurors leave room.)

MR. FINDER: The same ruling applied to Evans?

BY THE COURT: I don't think there is any trouble. She knew him before; she was standing on the street corner with him. I didn't assume we had any identification problem with him. If the Commonwealth has to use a police lineup on him, we'll have the same ruling on him, too. The first confrontation with Evans took place on a street corner in Houston and she rode out there in an automobile with him. The other people she met, apparently, under unpleasant circumstances, so it's different.

* * * * * * * * *

Order

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-548

United States of America ex rel. Robert Ray Ragazzini

v.

Joseph Brierley, Superintendent, State Correctional Institution, Pittsburgh, Pennsylvania

* * * * * * * * *

ORDER

Now, this 17th day of November 1970, it is hereby ordered that a Writ of Habeas Corpus shall issue in the event that relator is not afforded a new trial within sixty days of the date of this Order, unless extended for just cause by this Court.

(s) Wallace S. Gourley,
Senior District Judge.